IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JEREMY BELL, PLAINTIFF, v. MEDICAL DATA SYSTEMS, INC., d/b/a Medical Revenue Service, and OLD REPUBLIC SURETY COMPANY DEFENDANTS	Case No. 3:16-cv-324

COMPLAINT AND JURY DEMAND

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).
2. Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. This action arises out of violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq* (hereinafter referred to as "FDCPA"), and the Texas Finance Code § 392.001, *et seq* (hereinafter referred to as “TFC”) and the Florida Consumer Collection Practices Act (“FCCPA”) §§559.55 to 559.785by Defendants.

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), in that Defendant Medical Data Systems, Inc. (“MDS”) transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.
5. Plaintiff resides in this Judicial District.
6. MDS is subject to the laws of the state of Florida because it is located in Florida.

PARTIES

7. Plaintiff, Jeremy Bell (“Plaintiff”), is an adult individual residing in Dallas County, Texas.
8. MDS is a Florida Corporation operating in Vero Beach, Florida.
9. MDS can be served via its registered agent in Texas, Corporation Service Company, at 211 East 7th St., Suite 620, Austin, TX, 78701.
10. Defendant Old Republic Surety Company (“Old Republic”) is the surety company for the bond MDS has on file with the Texas Secretary of State.
11. Old Republic is a foreign entity that can be served in the state of Texas via its registered agent, Corporation Service Company, at 211 East 7th St., Suite 620, Austin, TX, 78701.
12. Old Republic is liable for acts committed by MDS pursuant to, and to the extent provided by, Chapter 392 of the Texas Finance Code and a bond secured pursuant thereto, as well as any other applicable law.
13. Specifically, Old Republic is liable on bond number 1177760.

FACTUAL ALLEGATIONS

14. Sometime prior to the filing of this Complaint, Plaintiff allegedly incurred a financial obligation that was used primarily for personal, family or household purposes (hereinafter the "Account"). Specifically, the alleged account is a debt on a medical account of Plaintiff’s.
15. The Account allegedly went into default with the original creditor prior to the filing of this Complaint.

16. Plaintiff is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).
17. Plaintiff is a natural person allegedly obligated to pay any debt and is thus a “consumer” as defined by FCCPA §559.55(2).
18. After the Account allegedly went into default, the Account was placed with or otherwise transferred to MDS for collection.
19. The principal purpose of MDS is the collection of debts using the mails and telephone and other means.
20. MDS is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and Tex. Fin. Code § 392.001(6), is a “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7), and FCCPA § 559.55(6).
21. The Account constitutes a “debt” as that term is defined by 15 U.S.C. § 1692a(5) and FCCPA §559.55(1) and is a “consumer debt” as that term is defined by Tex. Fin. Code § 392.001(2).
22. Plaintiff disputes the amount MDS is attempting to collect on the account.
23. Plaintiff requests that MDS cease all further communication on the Account.
24. During the one year prior to the date of the filing of this Complaint, in approximately December 2015, MDS made telephone calls to Plaintiff to collect the Account after seeing the account on his credit report.
25. In the December 2015 telephone call, MDS told Plaintiff that he could be sued on the account if he does not repay it.

26. In the information that MDS was reporting to Plaintiff's credit report, MDS reports that the date the account was opened (presumably by MDS) is "06/10" and the date of last activity on the account was "08/09."
27. Based on the information MDS was reporting, the account is so old that the statute of limitation for filing suit on the Account has expired.
28. At the time MDS's employee told Plaintiff it could sue Plaintiff on the Account, MDS, in fact, could not sue Plaintiff on the Account because of its age.
29. On information and belief, because of the amount of the account (approximately $78) MDS had no intent of suing Plaintiff on the Account even if it could have and Plaintiff didn't pay.
30. The threats of suing Plaintiff were made to Plaintiff for the purpose of making Plaintiff believe that MDS had the option of suing Plaintiff on the Account.
31. The reason MDS wanted Plaintiff to feel this way was to cause Plaintiff to pay MDS on the Account.
32. The purpose for the call described above was to attempt to collect the Account.
33. The call conveyed information regarding the Account directly or indirectly to Plaintiff.
34. The call constituted a "communication" as defined by FDCPA § 1692a(2).
35. The only reason that Defendant had conversations with Plaintiff was to attempt to collect the Account.
36. The statements and actions of Defendant constitute illegal communication in connection with debt collection.

37. All of the conduct by Defendants and/or their employees and/or agents alleged in the preceding paragraphs was done knowingly and willfully and purposefully.

RESPONDEAT SUPERIOR

38. The representative(s) and/or collector(s) at MDS were employee(s) and/or agent(s) of MDS at all times mentioned herein.

39. The representative(s) and/or collector(s) at MDS were acting within the course and/or scope of their employment at all times mentioned herein.

40. The representative(s) and/or collector(s) at MDS were under the direct supervision and/or control of MDS at all times mentioned herein.

41. The actions of the representative(s) and/or collector(s) at MDS are imputed to their employer, MDS.

COUNT I: VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.
BY MEDICAL DATA SYSTEMS, INC.

42. The previous paragraphs are incorporated into this Count as if set forth in full.

43. The act(s) and omission(s) of MDS and its representative(s), employee(s) and/or agent(s) and Defendant Cohen violated 15 U.S.C. § 1692(e)(2)&(5)&(10).

44. Pursuant to 15 U.S.C. § 1692k Plaintiff seeks damages, reasonable attorney's fees and costs.

COUNT II: VIOLATIONS OF THE TEXAS FINANCE CODE
BY MEDICAL DATA SYSTEMS, INC.

45. The previous paragraphs are incorporated into this Count as if set forth in full.

46. The act(s) and omission(s) of MDS and its representative(s), employee(s) and/or agent(s) violated Tex. Fin. Code § 392.301(a)(8) and § 392.304a(8)&(14).

47. Pursuant to Tex. Fin. Code § 392.403, Plaintiff seeks statutory damages, actual damages, injunctive relief, and reasonable attorney's fees and costs.

COUNT III: INVASION OF PRIVACY (INTRUSION ON SECLUSION) BY MEDICAL DATA SYSTEMS, INC.

48. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, MDS is liable to Plaintiff for invading Plaintiff's privacy (intrusion on seclusion). MDS intentionally intruded on Plaintiff's solitude, seclusion, or private affairs, and such intrusion would be highly offensive to a reasonable person.

49. Plaintiff suffered actual damages as a result of MDS's intrusion in the way of fear, anxiety, stress, sleeplessness, mental anguish mild depression and/or distraction from normal life.

COUNT IV: UNREASONABLE COLLECTION EFFORTS BY MEDICAL DATA SYSTEMS, INC.

50. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, MDS is liable to Plaintiff for its unreasonable collection efforts.

51. Plaintiff has a right to be free from unreasonable and wrongful collection and/or repossession efforts. *See, e.g., Moore v. Savage*, 359 S.W.2d 95 (Tex. Civ. App. – Waco 1962, writ ref'd n.r.e).

52. MDS's collection efforts were unreasonable and wrongful.

53. MDS's unreasonable collection efforts proximately caused Plaintiff to suffer injury, including but not necessarily limited to fear, anxiety, stress, sleeplessness, mental anguish mild depression and/or distraction from normal life.

COUNT V: IMPUTED LIABILITY OF OLD REPUBLIC SURETY COMPANY FOR LIABILITY OF MEDICAL DATA SYSTEMS, INC.

54. The previous paragraphs are incorporated into this Count as if set forth in full.

55. The act(s) and omission(s) of MDS and their representative(s), employee(s) and/or agent(s) in violation of Tex. Fin. Code § 392.301(a)(8) and § 392.304(4)&(5)(A)&(B)&(8)&(14)&(16)&(17) are imputed to Defendant Old Republic pursuant to Tex. Fin. Code § 392.102.

56. Pursuant to Tex. Fin. Code § 392.403, Plaintiff seeks damages, reasonable attorney's fees and costs from Defendant Old Republic.

COUNT VI: VIOLATIONS OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT BY MEDICAL DATA SYSTEMS, INC.

57. The previous paragraphs are incorporated into this Count as if set forth in full.

58. The act(s) and omission(s) of Defendant MDS and its representative(s), employee(s) and/or agent(s) violated FCCPA § 559.72(9)&(10)&(12).

59. Pursuant to FCCPA § 559.77, Plaintiff seeks actual and statutory damages, reasonable attorney's fees and costs.

EXEMPLARY DAMAGES

60. Exemplary damages should be awarded against MDS because the harm with respect to which Plaintiff seeks recovery of exemplary damages resulted from malice (which means that there was a specific intent by MDS to cause substantial injury or harm to

Plaintiff) and/or gross negligence (which means that MDS's actions and/or omissions (i) when viewed objectively from MDS's standpoint at the time of the acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm to others and (ii) were such that MDS had an actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others).

JURY TRIAL DEMAND

61. Plaintiff is entitled to and hereby demands a trial by jury.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following:

62. Judgment in favor of Plaintiff and against MDS as follows:

    a. Statutory damages in the amount of $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2);
    b. Actual damages pursuant to 15 U.S.C. 1692k(a)(1);
    c. Reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k(a)(3);
    d. Exemplary damages pursuant to the common law of Texas, see, e.g. *Waterfield Mortgage Co., Inc. v. Rodriguez*, 929 S.W.2d 641, 645 (Tex. App. 1996);
    e. Statutory damages in the amount of $1,000.00, actual damages, punitive damages, and reasonable attorney's fees and costs pursuant to FCCPA § 559.77(2);
    f. Such other and further relief as the Court deems just and proper.

63. Judgment in favor of Plaintiff and against MDS and Western, jointly and severally, as follows:

    a. Actual damages pursuant to Tex. Fin. Code § 392.403(a)(2);

b. An injunction permanently enjoining MDS following trial of this cause from committing acts in violation of the Texas Finance Code as cited herein pursuant to Tex. Fin. Code § 392.403(a)(1);

c. Exemplary damages pursuant to the common law of Texas, see, e.g. *Waterfield Mortgage Co., Inc. v. Rodriguez*, 929 S.W.2d 641, 645 (Tex. App. 1996);

d. Reasonable attorneys fees and costs pursuant to Tex. Fin. Code § 392.403;

e. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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